

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NOS. WRU-04-35-225 SPU-04-18
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**ORDER GRANTING EXPEDITED WAIVER, CANCELING PROCEDURAL  
SCHEDULE, AND CLOSING DOCKET**

(Issued August 5, 2004)

On July 19, 2004, Aquila, Inc., d/b/a Aquila Networks (Aquila), filed a request for expedited waiver of the provisions of 199 IAC 32 to permit Aquila to proceed with an issuance of up to \$700 million of securities. The securities to be issued will be limited to (1) unsecured long-term debt securities that will be converted into shares of common stock of Aquila, known as mandatory convertible securities, and (2) shares of common stock of Aquila, separate and apart from the mandatory convertible securities. The waiver would allow Aquila flexibility to access the capital market when necessary and when conditions are advantageous.

Aquila states that it will abide by the following conditions if the expedited waiver is granted.

1. Aquila will submit a written report to the Board by letter when mandatory convertible securities or shares of common stock are issued pursuant to the request. The written report will inform the Board of the amount and type of securities sold, identify the terms and conditions of the securities sold, and provide information concerning the cost incurred with issuing the

securities sold. The report will be promptly submitted following the closing and issuance of each sale of securities authorized pursuant to the request for waiver.

2. Aquila will use the proceeds from the issuance of the mandatory convertible securities to reduce or replace existing liabilities.

3. Aquila will not issue the securities unless the issuance, in the aggregate, results in a reduction to Aquila's interest expense or liability costs (to the extent cash proceeds are used to reduce or replace existing liabilities rather than debt).

4. Aquila will use the proceeds from the issuance of common equity to reduce liabilities or to maintain required working capital.

Aquila requests the Board grant the waiver on an expedited basis on or before August 18, 2004.

Board rule 199 IAC 32.8 allows a public utility to file a request for waiver of the filing requirements of chapter 32. If the Board does not grant the waiver request, Aquila asks, in the alternative, that the Board approve a proposal for reorganization, which includes the proposed issuance of securities. Aquila filed the information required by chapter 32 with the proposed reorganization. The proposal for reorganization was identified as Docket No. SPU-04-18.

On July 23, 2004, the Board issued an order docketing the request for expedited waiver and establishing a tentative procedural schedule to consider the proposal for reorganization. Applications to intervene in the proceeding and answers

and objections were to be filed on or before July 30, 2004. No objections or applications to intervene have been filed.

Pursuant to Iowa Code § 476.77(4), the Board may waive the filing requirements of § 476.77 if the Board finds a review of the reorganization is not necessary in the public interest. In rule 199 IAC 1.3 the Board has adopted four criteria for considering a waiver request; while these criteria are not directly applicable to a § 476.77 request, they provide a useful framework for analysis. The four criteria are: 1) the application of the rule would pose an undue hardship on the requesting party; 2) the waiver would not prejudice the substantial rights of any person; 3) the provisions of the rule are not specifically mandated by statute or another provision of law; and 4) substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule.

The Board has reviewed the information provided by Aquila and finds that there is clear and convincing evidence that the four criteria have been met. It would be an undue hardship on Aquila to require it to go through a full review of the securities offering since it would deprive Aquila of market timing flexibility to maximize the benefits from the issuance. The waiver will not prejudice the substantial rights of any person and Iowa Code § 476.77 contemplates the waiver of the Board's review where that review is not necessary in the public interest. The Board finds that the review is not necessary to protect to the public interest. Finally, substantial equal protection of public health, safety, and welfare will be afforded by other means.

In addition, Aquila has made commitments to inform the Board when the securities are issued. Aquila has committed to use the proceeds from the mandatory

convertible securities to reduce or replace existing liabilities and to use the proceeds from the issuance of common equity to reduce liabilities or to maintain required working capital.

Based upon consideration of the four criteria in rule 199 IAC 1.3 and Aquila's commitments, the Board will grant the waiver as requested. Aquila shall be expected to comply with the commitments made and inform the Board concerning the issuance of the securities and the use of the proceeds.

**IT IS THEREFORE ORDERED:**

1. The request for expedited waiver filed by Aquila, Inc., d/b/a Aquila Networks, on July 19, 2004, is granted.
2. Aquila, Inc., shall comply with the commitments it has made in this proceeding and shall provide the Utilities Board with documentation of the issuance of the securities and use of the proceeds.
3. The procedural schedule established in Docket No. SPU-04-18 is cancelled and the Docket is closed.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 5<sup>th</sup> day of August, 2004.